Volume 13 | Issue 2 Article 5

1968

Comment

Karl E. Mundt

COMMENT

THE HONORABLE KARL E. MUNDT†

ON MARCH 26, 1962, the Supreme Court of the United States handed down its historic decision in *Baker v. Carr*.[1] Subsequent decisions have further spelled out what has come to be known as the "one man, one vote" principle.

As a result of *Baker v. Carr* and *Wesberry v. Sanders*,[2] great strides have been made over the last five years toward bringing state legislative districts and United States congressional districts into line with "one man, one vote" standards. In addition, these decisions focused attention on other units of government where obvious inequities existed.

The Electoral College, operating under the general ticket or unit rule ("winner take all") method, is, in my estimation, the most unfair, inaccurate, uncertain, and undemocratic institution of all. It was natural, therefore, that a suit challenging the constitutionality of such a system was filed in October of 1966 before the Supreme Court of the United States.[3] This was an original action by the State of Delaware, as *parens patriae* for its citizens, against the State of New York, all other states, and the District of Columbia. It was brought under authority of article III, section 2 of the United States Constitution and section 1251 of the Judicial Code.[4] The suit challenged the constitutionality of the respective state statutes employing the "general ticket" or "state unit-vote" system by which the total number of presidential electoral votes of a state is arbitrarily misappropriated for the candidate receiving a bare plurality of the total number of citizens' votes cast within the state.

The Supreme Court refused to hear the case of *Delaware v. New York*.[5] This was unfortunate, because an obvious inequity exists. No one will ever know why the Court declined to accept the case. There could be a recognition, however, that the Electoral College system of selecting our President does not lend itself to the same "one man, one vote" type of attack that prevailed in the legislative field. Other factors, the most important of which is the historical significance of the compromise between the large and small states that made the adoption of the Constitution possible, enter into the consideration.

---

† United States Senator from South Dakota.
1. 369 U.S. 186 (1962).
2. 376 U.S. 1 (1964).
3. Delaware v. New York, No. 28 Original (filed July 20, 1966).
4. 28 U.S.C. § 1251 (1966).
5. 385 U.S. 895 (1966).

It is this same tendency to examine the supposed voting power of an individual in a mathematical vacuum, divorced from all other factors, that makes Mr. Banzhaf's article interesting but at the same time irrelevant. While his conclusions may be mathematically correct they are founded upon a mechanical computer and not the Constitution.

The supporters of the district plan for the election of the President do not deny that under such a system the voters of the smaller states would enjoy a somewhat greater voting power. Unless, however, we are to completely disregard the intent of the framers of the Constitution and rupture our federal system — the cornerstone of our democratic government — by the adoption of a direct election system, this must be so.

Under our present system, each state has a minimum of three electoral votes, regardless of its size. Any system which preserves this three-vote minimum and the federal principle involved will continue to grant a slightly greater voting power to some states. Indeed, this was the original purpose of the electoral vote bonus for smaller states, so that the greater populations of the larger states could not dictate the selection of the President. It was part of the compromise which made the Constitution possible.

On the other hand, the so-called "unit-vote" system is not part of our Constitution. It was unanticipated by the framers of that document and simply grew out of political expediency. Its use has resulted in disproportionate power for some states, and the voters in them, as Mr. Banzhaf's article points out, and should, in my estimation, be abolished in favor of the district plan.